

**ALASKA STATE LEGISLATURE**  
**SENATE HEALTH AND SOCIAL SERVICES STANDING COMMITTEE**

March 25, 2021

1:31 p.m.

**MEMBERS PRESENT**

Senator David Wilson, Chair  
Senator Shelley Hughes, Vice Chair  
Senator Mia Costello  
Senator Lora Reinbold (via teleconference)  
Senator Tom Begich

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

SENATE BILL NO. 26

"An Act repealing the certificate of need program for health care facilities; making conforming amendments; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 99

"An Act relating to care of juveniles and to juvenile justice; relating to employment of juvenile probation officers by the Department of Health and Social Services; relating to terms used in juvenile justice; relating to mandatory reporters of child abuse or neglect; relating to sexual assault in the third degree; relating to sexual assault in the fourth degree; repealing a requirement for administrative revocation of a minor's driver's license, permit, privilege to drive, or privilege to obtain a license for consumption or possession of alcohol or drugs; and providing for an effective date."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 26

SHORT TITLE: REPEAL CERTIFICATE OF NEED PROGRAM

SPONSOR(s): SENATOR(s) WILSON

01/22/21 (S) PREFILE RELEASED 1/8/21  
01/22/21 (S) READ THE FIRST TIME - REFERRALS  
01/22/21 (S) HSS, L&C  
03/25/21 (S) HSS AT 1:30 PM BUTROVICH 205

BILL: SB 99

SHORT TITLE: JUVENILES: JUSTICE, FACILITES, TREATMENT

SPONSOR(s): SENATOR(s) BEGICH

03/05/21 (S) READ THE FIRST TIME - REFERRALS  
03/05/21 (S) HSS, JUD  
03/25/21 (S) HSS AT 1:30 PM BUTROVICH 205

#### **WITNESS REGISTER**

GARY ZEPP, Staff  
Senator David Wilson  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Introduced SB 26 on behalf of the sponsor.

ALEXANDRIA HICKS, Program Coordinator  
Certificate of Need Program  
Department of Health and Social Services (DHSS)  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions about Certificate of Need.

ALBERT WALL, Deputy Commissioner  
Department of Health and Social Services  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions about healthcare licensing.

JARED KOSIN, President and CEO  
Alaska State Hospital and Nursing Home Association (ASHNHA)  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in opposition to SB 26.

PORTIA NOBLE, representing self  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of SB 26.

RYAN MCKEE, Americans for Prosperity  
Wasilla, Alaska

**POSITION STATEMENT:** Testified in support of SB 26.

SARAH HETEMI, representing self  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of SB 26.

LOKI TOBIN, Staff  
Senator Tom Begich  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented the sectional analysis for SB 99.

MATT DAVIDSON, Social Services Program Officer  
Division of Juvenile Justice  
Department of Health and Social Services (DHSS)  
Juneau, Alaska

**POSITION STATEMENT:** Explained an error corrected by SB 99.

#### **ACTION NARRATIVE**

[1:31:13 PM](#)

**CHAIR DAVID WILSON** called the Senate Health and Social Services Standing Committee meeting to order at 1:31 p.m. Present at the call to order were Senators Costello, Begich, Hughes, and Chair Wilson and Senator Reinbold via teleconference.

#### **SB 26-REPEAL CERTIFICATE OF NEED PROGRAM**

[1:32:00 PM](#)

**CHAIR WILSON** announced the consideration of SENATE BILL NO. 26 "An Act repealing the certificate of need program for health care facilities; making conforming amendments; and providing for an effective date." He stated his intent to have an overview of the bill and take testimony.

**CHAIR WILSON** said that well-intended government laws and regulations have unintended consequences, especially upon small businesses, that prevent the expansion of the economy in Alaska. Some of the government's well-intentioned legislation have led to limited consumer choice for services and stifled competition and innovation and expansion among certain industries and sectors. This includes the transportation sector, like between Uber, Lyft, and the taxi industry. This has led to the same situation with the hospitality sector with distilleries vs. bars, wineries, and restaurants, and the healthcare industry as well. These battles, unfortunately, were created by government laws and regulations, which while well intended, did not work well for Alaska at times. Alaskans need and deserve a free

market with the law of supply and demand for direct production of goods and services. Competition is good for keeping prices low. Healthcare is a complicated system. People will hear that Alaska is the most expensive healthcare market in the world. There will be diverse conversation on this topic. Some may not be willing to testify on the record because of the pressure from larger players. His office has heard from many who are fearful of losing hospital privileges and hurting their relationships with some providers who are Certificate of Need (CON) recipients. SB 26 provides a window of a couple of years before the repeal becomes effective. His office has examined some of the historical arguments for CON that don't provide economic justification for depriving customers of the benefits of more freedom of choice.

[1:35:42 PM](#)

GARY ZEPP, Staff, Senator David Wilson, Alaska State Legislature, Juneau, Alaska, said that since the legislation is not new to any senator in the committee, he shortened the presentation on the need to repeal the state's Certificate of Need program. He took a moment to thank first responders for their work during the COVID-19 pandemic. SB 26 provides an opportunity for Alaskans. If people believe that a free market economy benefits consumers, if people believe in private ownership and local control of resources and property and local choice and communities know what is best, then they should support SB 26 and repeal government control of healthcare options, facilities, and services. The Certificate of Need program, known as CON, was first enacted in 1964 in New York. The federal government mandated that states enact CON programs during the 1970s when inflation rates were at near record levels of about 20 percent. The thought at the time was that CON would restrain healthcare costs, increase healthcare quality, and improve access to care for the poor and underserved. Later in the presentation the committee will see how that has been working nationally and in Alaska.

MR. ZEPP displayed a map on slide 4 of the presentation showing the current national status of CON programs. Thirty-five states have CON programs. Three states do not but have an approval process similar to CON. Twelve states have fully repealed their CON programs. The federal law enacted CON in the 1970s and repealed CON as a federal mandate in 1987.

MR. ZEPP presented Alaska's Legislative History of Certificate of Need on slide 5. In 1976, Alaska passed its first CON law. Since then, there have been a few minor changes. In 1990, the

state started charging for submitting an application when seeking approval for a CON. Currently the fees are structured as follows: for projects of \$2.5 million or less, the fee is \$2,500. For projects over \$2.5 million, the fee is .1 percent of the total cost, up to a maximum of \$75,000.

MR. ZEPP presented slide 6, What are we trying to solve in Alaska by repealing our certificate of need laws? The Department of Justice, the Mercatus Center, and many others have studied this issue for over four decades. Some have testified in the Alaska legislature in support of repealing CON. He directed attention to the points on slide 6 showing why Alaska should repeal CON. CON programs limit the introduction and expansion of medical services and equipment, rehabilitation centers, nursing home beds, and medical imaging technologies. Data and research on closures of rural hospitals show that they are related to low patient volume, challenging payer mix (Medicare and Medicaid patients, who pay less), geographical isolation and workforce shortages. None of this has to do with whether states have CON programs. Proponents will say that high-quality healthcare is a reason for CON. Data and research indicate that outcomes are not better with CON. CON programs are supposed to increase charity care, but no evidence exists that charity care is higher in states with CON. Racial disparities seem to increase in states with CON. CON decisions are not approved by nonbiased medical professionals. CONS are approved by Department of Health and Social Services (DHSS) staff and elevated to the commissioner for approval. CON programs grant a government-protected monopoly to incumbent providers. According to the 2016 Alaska Milliman report, which was done on half of the Premiera Insurance Company, hospital margins in Alaska can be up to 223 percent higher than states in the lower 48.

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MR. ZEPP said that the CON is designed to restrain healthcare costs. Evidence and studies show that CON regulations' effect on cost has been inconsistent. CON regulations tends to increase the cost of healthcare services. Alaska's general cost of living ranks seventh among the states, so why does Alaska have the highest healthcare costs in the world. Healthcare premiums in Alaska are 130 percent higher than the states of Washington, Oregon, Idaho, Wyoming, and North Dakota. Average hospital costs in Alaska are 138 percent higher than those comparison states. Physician payment levels are 148 percent higher than nationally and hospital payments are 56 percent higher than nationally. Alaska hospital margins can run 15.6 percent and Anchorage hospital margins average 20.6 percent. That is five percent

higher than San Francisco, which is the next highest in the country. Alaskans should have choice, competition, and Alaska should allow new entrants and new technologies when it comes to healthcare.

1:43:45 PM

MR. ZEPP presented slide 7, What happened to CON during the COVID pandemic? Nationally, 24 states temporarily suspended their CON laws and regulations. This gave healthcare providers flexibility regarding capacity and equipment. Alaska suspended CON for 10 months. One application was submitted during this period. The CON laws and regulations are promoted as being necessary for health and safety. The suspensions provided flexibility and seemed to work out just fine during the pandemic. If CON regulations can be suspended for 10 months during a pandemic, he asked then why is CON needed in Alaska.

MR. ZEPP presented slide 9, How is Alaska's Certificate of Need program working today? He asked if CON is working to reduce healthcare costs to consumers, then why does Alaska have the highest healthcare costs in the world. Alaska's Certificate of Need laws have led healthcare providers to sell state-of-the-art medical equipment and buy lesser quality, lower-priced medical equipment to remain under the Certificate of Need \$1.5 million threshold. He asked wouldn't those dollars better serve Alaskans if they were invested in healthcare facilities, innovation, and allowing new entrants who provide additional quality health care services. Alaska's Certificate of Need laws result in territorial disputes and legal costs between healthcare providers, because one healthcare provider objects to another healthcare provider's plans to add healthcare services. He asked does this improve or provide better quality healthcare to Alaskans. Presidents George W. Bush, Obama, and Trump are on the record for supporting the repeal of CON programs. Governor Walker supports repealing CON programs in Alaska. The data supporting the repeal of CON is voluminous.

MR. ZEPP said that SB 26 provides an opportunity for Alaskans. He asked for support for SB 26 from those who believe in private ownership and local control of resources and property and local choice. Alaskans deserve choice when it comes to healthcare and healthcare services.

1:47:11 PM

SENATOR COSTELLO asked what companies or business pay to have a CON application prepared, how many CON applications the state

has in any given year, and once a company or business applies for a CON, is that information public.

MR. ZEPP said that in 2018 and 2019, Delta Junction tried to establish a higher level of healthcare facility. The folks there did not have the expertise to provide the application, so this presents a challenge to people who are just trying to improve their communities. He deferred to DHSS to answer her questions.

1:48:58 PM

ALEXANDRIA HICKS, Program Coordinator, Certificate of Need Program, Department of Health and Social Services (DHSS), Anchorage, Alaska, said that regarding the cost of preparing the application, in her tenure, applicants have employed many different methods to go through application process. Some do it in-house. Some have hired consultants to assist with the preparation of an application. She is unaware of the costs. Excluding the year 2020, the last five years the department has had an average two CON applications a year. Some years are busier than others, but that is the average. The department also processes RFDs, requests for determination. When a facility is unsure of the necessity of filing for a CON or has questions about the monetary threshold or whether the service is an addition, expansion, or alternation of services, it will submit a request for determination to the department. The department has gotten between five and six a year over the past five years. There is a timeline and protocol when the department receives an application and notifies the public of receipt of application. Anyone interested in providing an application to be reviewed concurrently may submit a letter of intent or application. No information is shared at this point. Once the window for other applications has closed and no letter of intent or other application has been received, then the department will post the application and the public notice with the particulars of the project. At that point, it is publicly accessible through the department web page.

SENATOR COSTELLO said she that would like to know at least from one entity what it cost to prepare an application for a CON. Her understanding is that a CON application is expensive to prepare. She has heard concerns that once the data is public, it can help competitors in the future. She would like to have more information about cost of application.

CHAIR WILSON suggested that maybe a testifier, who is a former program coordinator for CON and is the director of ASHNAHA

(Alaska State Hospital and Nursing Home Association) could answer that.

1:55:59 PM

SENATOR BEGICH said that his issue is always the conflict between the free market and the state's responsibility for health and safety matters. Mr. Zepp said the free market is an issue and cited the higher returns from hospitals that have a CON. In other words, they are making more money because of the CON. He asked whether free market operating principles wouldn't discourage operators to stay in the state without the incentives that brought them to a fairly-difficult place to operate.

MR. ZEPP replied that in his research and in talking to people in states that have repealed the CON, there is not a flood of change in those states when repealing CON removes barriers, which enables new entrants and new technology.

CHAIR WILSON clarified that now 14 states have repealed CON, including Florida and Georgia, and Tennessee is in the process.

SENATOR BEGICH asked if Mr. Zepp knows why racial disparities increase with CON and can that data be found.

MR. ZEPP answered that he will provide that information.

SENATOR BEGICH said that he asked last year how removing CON would impact rural communities whose facilities are provided by the Indian Health Service (IHS).

MR. ZEPP responded that there are a couple of exemptions in Alaska's CON regulations. They are the IHS, Native health corporations, and a physician-owned facility.

SENATOR BEGICH asked if it would still be status quo for those entities if the CON is removed.

CHAIR WILSON said that those exempted services could open up anywhere in Alaska today.

1:59:52 PM

SENATOR BEGICH clarified, and Chair Wilson affirmed, that the removal of CON would have no impact on that their legal ability to do what they do now. Senator Begich said that his safety issue is whether there are adequate regulatory protections outside of CON for protections of public health for these facilities. He assumes they exist in a number of different



statutes. He wants to know that healthcare provision will not be diminished if CON is removed. Those who support CON argue that it would deregulate the protections of the market.

MR. ZEPP replied that SB 26 only repeals CON laws and regulations and doesn't affect medical licensing, certifications, or current laws and regulations that addresses that particular area.

CHAIR WILSON added that, technically, with CON the state has seen facilities try to stay under the threshold of dollars, like ambulatory surgery centers, so the facilities have one or two rooms and don't have adequate medical staff. If something does go wrong, it is going to go wrong quickly. Repealing CON would allow those facilities to have the equipment and staffing they need to provide safer services.

SENATOR BEGICH asked that if he decides to start a hospital or clinic that would have needed a CON, now without the CON he would just build and staff it or is there a process so the state would ensure that he was a practitioner who could provide the services.

CHAIR WILSON replied that he will let Deputy Commissioner Wall answer that as the state has healthcare licensing regulations.

SENATOR BEGICH asked if Mr. Wall could also explain why the fiscal note has an indeterminate Medicaid cost.

2:03:09 PM

ALBERT WALL, Deputy Commissioner, Department of Health and Social Services, Juneau, Alaska, said that every regulation and law that covers in this case, building a hospital, would be in place outside of CON. The facility would need to meet the requirements of building a new facility, become accredited and licensed as a hospital and so on. There are a number of laws and number of regulations that would apply. They would differ according to the type of facility. CON covers a lot of facilities. The fiscal note is indeterminate because the department cannot identify what may or may not potentially happen. His belief is that it would not cost the state anything not to have the CON, but there could be costs to the state based on the billing pattern of the facility once it was up and running.

SENATOR COSTELLO said that under the disaster declaration, any and all state regulations can be ignored. She asked if the

licensure rules Mr. Wall described were not followed under the disaster declaration.

MR. WALL answered that he would defer to others about what was waived. He is aware of a temporary waiver to increase bed capacity in hospitals. He will ask Ms. Hicks to explain what is currently in place for regulatory oversight of the CON process.

CHAIR WILSON asked Ms. Hicks to talk about how alternative care sites are being handled currently without a declaration in place.

MS. HICKS replied that the only standard waived because of the declaration related to the pandemic was the addition of beds as far as the CON is concerned. For example, an independent diagnostics facility was not impacted because of CON because of the emergency declaration because that facility would not add beds. It was specific to waiving CON requirements regarding additional beds. The emergency declaration was lifted so it is not applicable at this point.

2:08:40 PM

SENATOR HUGHES said that it blows her mind that people were advocating for this in the 60s and 70s to lower costs and increase access for the underserved population. That doesn't make sense logically. She asked how the case was made for CON and did it ever achieve those goals.

MR. ZEPP said that in his research and talking to the Federal Trade Commission officials, there was a high rate of inflation and CON was a way to combat that. It did not work and the federal government repealed it in 1987. It was a mandate tied to additional federal funding. Every state except Louisiana enacted some sort of CON program because of federal leverage. The program was unsuccessful in restraining high health costs.

SENATOR HUGHES asked if the state will lose any federal dollars by repealing the CON program.

MR. ZEPP answered not to his knowledge.

SENATOR HUGHES asked whether the states that repealed CON were able to track any lowering of healthcare costs.

MR. ZEPP replied that the Federal Trade Commission, Department of Justice, Mercatus Center, and other institutions have studied that. All the empirical evidence that he can read shows that CON

did not control costs and did not achieve the results expected when it was enacted in 1976.

SENATOR HUGHES said she wants to know the reverse, whether any data shows that costs went down after CON was removed.

MR. ZEPP said that all the empirical evidence he has read shows that in comparisons of states with CON programs to those that do not, costs are lower and healthcare quality is higher for states without CON. He does not know quickly how that happened after the federal mandate was repealed.

SENATOR HUGHES said she wonders if within a state there is data showing costs went down after it was repealed. She would assume that happened, but that would be interesting to see.

MR. ZEPP said that New Hampshire in 2016 repealed its CON program. He spoke to staffers and the legislator who had that bill. They provided information that after the repeal of CON, employment for healthcare professionals rose.

SENATOR BEGICH said that maybe NCSL (National Conference of State Legislatures) has that data on the impact on prices pre- and postrepeal of CON within a state.

CHAIR WILSON said his office can try to find that data.

SENATOR REINBOLD said that Eagle River is in deep need of a facility and this is holding them back. She appreciated the chair bringing this bill forward.

2:14:09 PM

MR. ZEPP presented the sectional analysis and noted many sections are conforming amendments:

Section 1: AS 12.25.030(e) - Title 12, Code of Criminal Procedure

PAGE 1, LINES 4-6:

This conforming section replaces the statutory definition of a "health care facility" reference under the "Arrests & Citations" chapter of statutes and deletes the previous reference under the "Certificate of Need" program.

Section 2: AS 12.55.155(c)(36)(A) - Title 12, Code of Criminal Procedure

PAGE 1, LINE 7 - PAGE 2, LINE 4:

This section provides for a new definition of a "health care facility" reference under the "Sentencing and Probation" chapter of statutes.

Section 3: AS 12.55.155(c)(36) - Title 12, Code of Criminal Procedure

PAGE 2, LINES 5 - 7:

This section adds the definition of a "residential psychiatric treatment center" reference under the "Sentencing and Probation" chapter of statutes.

Section 4: AS 18.20.400(c) - Title 18, Health, Safety, Housing, Human Rights, and Public Defender

PAGE 2, LINE 8 - PAGE 4, LINE 10:

This conforming section adds the definition of a "residential psychiatric treatment center" reference under the "Overtime Limitations for Nurses" chapter of statutes.

Section 5: AS 18.20.400 - Title 18, Health, Safety, Housing, Human Rights, and Public Defender

PAGE 4, LINE 11 - LINE 23:

A conforming section that adds the definition of a "residential psychiatric treatment center" reference under the "Overtime Limitations for Nurses" chapter of statutes.

Section 6: AS 18.20.499(2) - Title 18, Health, Safety, Housing, Human Rights, and Public Defender

PAGE 4, LINE 24 - PAGE 5, LINE 5:

A conforming section that adds the definition of a "health care facility" reference under the "Overtime Limitations for Nurses" section of statutes and deletes the previous "Certificate of Need" statutory references.

[2:16:22 PM](#)

Section 7: AS 18.26.220 - Title 47, Welfare, Social Services, and Institutions

PAGE 5, LINE 6 - LINE 16:

This section is amended to add the state licensing requirements for facilities and services under a new statutory reference remove the previous requirements for facilities and services under a "certificate of need" program under the "Centralized Licensing and Related Administrative Procedures" chapter of

statutes. The amended section maintains licensing requirements for facilities and/or services.

Section 8: AS 18.35.399(9) - Health, Safety, Housing, Human Rights, and Public Defender

PAGE 5, LINE 17 - LINE 29:

A conforming section that removes the reference to the "certificate of need" statute and replaces it with the updated statute reference under AS 18.20.400 (d), "Definitions".

Section 9: AS 18.07.021 - 18.07.111; AS 21.86.030(c)(1); AS 44.64.030(a)(18); and AS 47.80.140(b)

PAGE 5, LINE 30 - PAGE 6, LINE 1:

This section repeals various statutory references related to the "certificate of need" program.

[2:17:34 PM](#)

Section 10: Section 4, ch. 275, SLA 1976, is repealed:

PAGE 6, LINE 2:

Repeals a section of uncodified law in sec. 4, ch. 275, SLA 1976, which provided a transition to allow medical facilities in existence or under construction before July 1, 1976 to obtain certificates of need.

Section 11: Certificate of Need; Applicability:

PAGE 6, LINE 3 - LINE 8:

Amends uncodified law and provides that the Department of Health & Social Services may not take any action to revoke, enforce, or modify a certificate of need issued to a health care facility before the effective date of the Act.

Section 12:

PAGE 6, LINE 9 - LINE 14:

Adds a new subsection that directs the Department of Health and Social Services to create regulations necessary to implement the changes made by this Act by the effective date of the legislation.

Section 13:

PAGE 6, LINE 15:

Section 12 of this Act takes effect immediately under AS 01.10.070(c).

Section 14:

PAGE 6, LINE 16:

Provides that, except section 13 of the Act, the effective date of the Act is July 1, 2024.

2:19:08 PM

CHAIR WILSON opened public testimony.

2:19:18 PM

JARED KOSIN, President and CEO, Alaska State Hospital and Nursing Home Association (ASHNHA), Anchorage, Alaska, said that ASHNHA respectfully opposes SB 26. Problems do exist with the current CON program, but the wholesale statutory repeal of CON is not the answer. Healthcare is not a true free market. In a free market, hospitals and ambulatory surgery centers could compete on an equal footing for outpatient surgical services, but hospitals must maintain emergency rooms, treat all patients, regardless of ability to pay, and be open all the time. Ambulatory surgery centers do not have a duty to treat and can have limited hours. Ambulatory surgery centers are a critical component of healthcare. The point is that customers are not choosing between two similarly situated goods in a free market where the lowest cost wins, but they are choosing between two totally different products. One is subject to a host of expensive requirements that the other is not. For this reason and many others, it makes sense to have some controls in place to level the playing field and ensure a comprehensive healthcare system is in place. ASHNHA is committed to working with the legislature and the department to improve the CON program. The way to do this is updating and revising CON standards and calculations. These reside in regulations, not statute. Decisions should be made using current data, not data from 2011 and 2012. ASHNHA urges the committee to look at the regulatory framework of CON rather than a statutory repeal.

SENATOR HUGHES said that 12 or 14 states do not have CON. She asked how they are managing this. Mr. Kosin describes an impossible situation, but those states must have hospitals.

MR. KOSIN said that he would first look at Texas. He does not know if Texas has a CON program in place, but he does know that Texas has had an explosion of free standing emergency departments. Those are boutique services on almost every corner. Mr. Zepp said in his presentation that there wouldn't be a boom of services, but ASHNHA has heard that that is a problem in Texas. He cannot answer her question directly, but he has heard stories about Texas.

CHAIR WILSON said that Texas taxes ambulatory services to combat the differentials with facilities that fall under EMTALA (Emergency Medical Treatment and Labor Act), like the emergency rooms.

SENATOR BEGICH said that Mr. Kosin said that the current CON system is flawed. He asked if Mr. Kosin has made suggestions to the committee or provided ways to improve the CON law to address some of the concerns in the legislation.

MR. KOSIN said that two years ago ASHNHA provided the department a playbook on possible improvements to the regulations, specifically to the standards and calculations used. The department worked on it at some point, but he doesn't know where that process is. ASHNHA did provide detailed suggestions on how the department can update the program and adjust the formulas to make it a more sensible program.

[2:24:46 PM](#)

SENATOR BEGICH asked him to provide that or any updates to the committee.

MR. KOSIN answered that he will.

SENATOR HUGHES asked whether the requirement for a hospital to have an emergency room and not turn anyone away is required by federal law in order to get Medicaid and Medicare or is it a state-by-state thing. Now that there are urgent care centers, she asked why a hospital has to see someone with an earache. She asked if that could be fixed in state law or is that a federal requirement.

MR. KOSIN replied that EMTALA is the federal law that requires that. ASHNHA would agree on trying to correct patient flow so that people go to the correct place of care. It is economical for the patient and better for the system of care. There absolutely needs to be improvement there, but it is a federal law that if someone comes to an emergency room there is duty to treat.

SENATOR HUGHES said that she would hope that hospitals would advocate for change at the federal level. It would be helpful if a decision point system was in place to help consumers make choices about appropriate care. She asked if anything prevents hospitals from doing something like that.

MR. KOSIN replied that he does not know about the limitations once someone enters an emergency department. Hospitals want that result. Mat-Su Regional built two free standing urgent cares to try to get people to access care at the right level. Mat-Su Regional ran a superutilizer program to try to reduce overutilization of the emergency department. Hospitals generally want proper utilization to happen because it frees up bed space and allows more efficient patient flow. That is what all models of care are trying to get at.

SENATOR HUGHES said she knows that is not exactly related to CON, but when trying to justify the need for CON because of overregulation and the bottom line for hospitals, it is pertinent. Hospitals should try to solve the fact that the system has changed and people have other options.

2:29:09 PM

PORTIA NOBLE, representing self, Anchorage, Alaska, said that CON laws across the country have limited supplies of services and facilities. The approval process for CON is determined by government. Government finds itself being lobbied by large healthcare monopolies. CON law has driven up the cost to consumer, lowered the quality of care, limited the availability of needed services, and has fought competition in the healthcare market. Any time in America, and especially during a pandemic, healthcare providers should not need government permission to expand their size and scope of practice. During the pandemic, over 20 states waived or suspended CON laws relating to hospital beds and essential services. It should not take a pandemic for states to realize how CON laws threaten public health. It is time to eliminate laws that harm patients and the spirit of competition. She would be happy to share her information from the Cato Institute and the Mercatus Center.

2:30:58 PM

RYAN MCKEE, Americans for Prosperity, Wasilla, Alaska, said that removing CON would make it easier for new healthcare practices to be established in Alaska and for current ones to expand. That will create competition and drive costs down, which are so high in Alaska. During the pandemic, part of the emergency order was to suspend CON laws. If this was seen as a must have during the pandemic, why bring it back postCOVID. Allowing more groups to practice in Alaska, especially in rural Alaska, would be a benefit to the state. CON laws only protects those already established in Alaska from competition.

2:32:30 PM



SARAH HETEMI, representing self, Anchorage, Alaska, said that during the COVID pandemic, many states suspended CON laws. North Carolina first lifted CON laws on hospital beds and then 19 other states suspended a portion of their CON laws. The states were reacting quickly to alleviate strains on medical systems to better respond to the pandemic. Providers were allowed flexibility to respond to the pandemic. She asked why that flexibility is not allowed year-round for various services. The Mercatus Center finds CON laws are associated with fewer hospitals per capita, fewer ambulatory surgical centers per capita, fewer rural hospitals per capita, fewer rural ambulatory surgical centers per capita, fewer hospice care facilities, fewer dialysis clinics, fewer hospitals offering MRI and CT scans, longer driving distances to obtain care, and greater racial disparities. Perhaps people were not aware of how harmful CON laws were before the pandemic, but now they are. It would be morally wrong not to repeal CON. It is a question of whether people are for a better healthcare system.

[2:35:15 PM](#)

CHAIR WILSON closed public testimony. He held SB 26 in committee.

[2:35:47 PM](#)

At ease

#### **SB 99-JUVENILES: JUSTICE, FACILITIES, TREATMENT**

[2:36:28 PM](#)

CHAIR WILSON reconvened the meeting and announced the consideration of SENATE BILL NO. 99 "An Act relating to care of juveniles and to juvenile justice; relating to employment of juvenile probation officers by the Department of Health and Social Services; relating to terms used in juvenile justice; relating to mandatory reporters of child abuse or neglect; relating to sexual assault in the third degree; relating to sexual assault in the fourth degree; repealing a requirement for administrative revocation of a minor's driver's license, permit, privilege to drive, or privilege to obtain a license for consumption or possession of alcohol or drugs; and providing for an effective date." He stated his intent to hear an overview of the bill, have a sectional analysis, and take public testimony. He asked the bill sponsor Senator Begich to explain the bill. He thanked Senator Begich for carrying this legislation. The chair's office had carried the bill for four years. It is a much needed update.

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SENATOR BEGICH said that he is a proud former employee of the Department of Juvenile Justice (DJJ), so he is pleased to have an opportunity to present the bill that the chair had carried so well over the last few years. SB 99 is relatively noncontroversial, but it is an important bill because it makes clarifying changes to criminal justice and health and social services statutes to correct a number of outdated, incomplete, or inaccurate references to juvenile justice staff and facilities. In particular there is one issue from the 2013 where an employee of the DJJ abused someone in the employee's care. Because the employee did not have an authority designation, the employee was eventually acquitted of the crime. This bill will correct that egregious violation of those in custody. To go to the definitions portion of the bill, current statute uses the terms juvenile detention homes and juvenile work camps. The state no longer uses those definitions or descriptions. They are not in federal or local law. Those terms are outdated and inaccurate and not reflective of the facilities under DJJ's jurisdiction. The bill, as he said, corrects the court finding around DJJ staff and their position of authority. It adds juvenile probation officers and staff at juvenile facilities to the list of mandatory reporters for child abuse and neglect. It also provides legislators with clear references when developing legislation that affect the juvenile justice system. Bills have had drafting errors because of unclear references, such as a statute about minors consuming alcohol, which DJJ has not enforced in years.

SENATOR BEGICH said the bill cleans up the law to reflect the reality of what DJJ does today. The bill was one of the casualties of COVID because COVID shortened the session last year. It had passed the House 35-0. He thanked the chair for cosponsoring the bill.

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LOKI TOBIN, Staff, Senator Tom Begich, Alaska State Legislature, Juneau, Alaska, presented the sectional analysis for SB 99:

Section 1. Amends AS 09.65.255 Liability for acts of minors to the list of facilities not held liable for acts of an unemancipated minor in their custody and conforms language.

Section 2 through Section 4. Conforms language used in AS 11.41.425 and AS 11.41.427.

Section 5. Amends AS 11.41.470 Definitions by including employees of juvenile treatment institutions and juvenile and adult probation officers in the definition of legal guardians.

Section 6. Amends AS 11.41.470 Definitions by adding correctional employees, juvenile facility staff, treatment institution staff, juvenile probation officer, and adult probation officers to the list of persons able to exercise custodial control over a minor.

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Section 7. Inserts new definition subsections under AS 11.41.470 Definitions.

Section 9 through Section 12. Conforms language used in AS 14.07.020, AS 14.30.186, AS 17.37.070, and AS 18.20.449.

Section 13. Conforms language used in AS 47.10.141 Runaway and missing minors.

Section 14. Inserts a new subsection under AS 47.10.141 Runaway and missing minors to define "temporary secure juvenile holding area," and conforms definition under AS 47.12.990 Definitions.

Section 15. Conforms language used in AS 47.10.990 Definitions.

Section 16. Conforms language used in AS 47.12.025 Special provisions for certain persons considered to be minors.

Section 17. Amends AS 47.12.030 Provisions inapplicable by inserting AS 04.16.050 Possession, control, or consumption by persons under 21 years of age to the list of legal proceedings that result from a violation which a legal guardian of an accused minor must be present for.

Section 18. Amends AS 47.12.040 Investigation and petition by clarifying the Division of Juvenile Justice (the division) may file amended or supplemental petitions, and that the courts may

authorize an amended or supplemental petition if additional facts are determined.

Section 19. Clarifies type of detention facility described in AS 47.12.120 Judgements and orders and inserts, "secure residential psychiatric treatment center," to places a minor in custody of the division may be placed.

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Section 20. Includes "juvenile treatment facility, juvenile detention facility, secure residential psychiatric treatment center" in AS 47.12.140 Court disposition order as locations a minor in custody of the division may be placed.

Section 21. Amends AS 47.12.150 Legal custody, guardianship, and residual parental rights and responsibilities by inserting AS 47.12.240 Detention of minors to the list of statutes that apply when legal custody of a minor must be established.

Section 22. Conforms language used in AS 47.12.240 Detention of minors and clarifies locations exempted under this section.

Section 23. Updates locations used in AS 47.12.240 Detention of minors.

Section 24. Clarifies the type of probation officer in AS 47.12.245 Arrest and clarifies language used in "conditions of conduct."

Section 25. Clarifies language in AS 47.12.250 Temporary detention and detention hearing and inserts, "temporary secure juvenile holding area," as a location a minor in custody of the division may be detained.

Section 26. Repeals AS 47.12.270 Youth counselors and reenacts statute using conforming language.

Section 27. Amends AS 47.12.310 Agency records by referencing AS 47.12.120 Judgement and orders to ensure proper notification is given to a victim.

Section 28. Amends AS 47.12.315 Public disclosure of information in department records relating to certain minors by clarifying which type of offense the division may disclose to the public or by request.

Section 29. Clarifies the definition of a "juvenile detention facility" used in AS 47.12.315 Public disclosure of information in department records relating to certain minors.

Section 30. Clarifies the definition of minor used in AS 47.12.990 Definitions.

Section 31. Inserts new definitions under AS 47.12.990 Definitions for "juvenile probation officer," "juvenile treatment facility," "residential childcare facility," and "temporary secure juvenile holding area."

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Section 32. Conforms language used in AS 47.14.010 General powers of department over juvenile institutions.

Section 33. Conforms language used in 47.14.020 Duties of department.

Section 34. Conforms language used in AS 47.14.040 Authority to maintain and operate home, work camp, or facility and inserts, "temporary secure juvenile holding area, juvenile detention facility, or juvenile treatment facility," to the locations permitted to be operated by a municipality or nonprofit.

Section 35. Repeals and reenacts AS 47.14.050 Operation of homes and facilities to clarify which facilities the Department of Health and Social Services (the department) may adopt standards and regulations for.

Section 36. Conforms language used in AS 47.14.050 Operation of homes and facilities.

Section 37 through Section 38. Conforms language used in AS 47.14.990 Definitions.

Section 39. Inserts new definition subsections under AS 47.14.990 Definitions.

Section 40. Amends AS 47.14.020 Duties of department to include juvenile probation officers, juvenile probation office staff, and staff of juvenile detention and treatment facilities as required to report evidence of child abuse or neglect.

Section 41. Repeals outdated definitions for "juvenile detention home," "juvenile work camp," and "treatment facility" used in AS 47.12.990 and AS 47.14.990. Repeals revocation of juvenile driver licenses for offenses involving a controlled substance that was handled informally by the division used in AS 28.15.176. Repeals revocation of driver license for offenses that were unrelated to driving and handled informally by the division used in AS 47.12.060.

Section 42. Establishes applicability language for offenses committed on or after effective date for Section 2 through Section 8 and 17 of this Act.

Section 43. Adds transition language authorizing the department to adopt regulations to implement the changes made under this legislation.

Section 44. Establishes an immediate effective date

SENATOR BEGICH said the repeal under Section 41 does not take away the ability of the court to revoke a minor's driver's license. A change to statute in 2016 removed a rarely used defense called habitual minor consuming alcohol. DJJ never used one of the actions. Mr. Davidson can speak to how it clears up an error made in SB 165.

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SENATOR HUGHES said the committee received a letter from Louis [Imbriani]. She asked if it was an automatic revocation and then juveniles could go through treatment but now it is being repealed.

SENATOR BEGICH said he is very familiar with both programs. Neither of these programs go away. The Volunteers of America program and [Juvenile] ASAP (Alcohol Safety Action Program) have been operating through the district court. They do not use the DJJ in that regard. The program has already been shifted to the district court. It doesn't go away. The options that Mr. Imbriani identified will continue to be used as an alternative

to detention or for treatment options. This was a drafting error in a bill from 2016. It is a mess in the law. DJJ could give a more formal response.

SENATOR HUGHES said that it is not changing way the way it is currently handled. She clarified, and Senator Begich affirmed, that young people will still go through treatment.

CHAIR WILSON asked Matt Davidson to comment.

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MATT DAVIDSON, Social Services Program Officer, Division of Juvenile Justice, Department of Health and Social Services (DHSS), Juneau, Alaska, said that Senator Begich's description is correct. Related to alcohol, the division has never had much of a role for minors consuming. It has been handled by district court. There was a crime called habitual minor consuming. When that crime was in effect, DJJ did repeal driver's licenses. Nancy Meade from the court is online because of this question about how driver's licenses are revoked. This bill has no impact on the courts or the Division of Motor Vehicles to repeal driver's licenses.

SENATOR BEGICH said that he was chair of the Juvenile Justice Committee during the Hickel administration. The committee moved to change minors consuming to a district court authority. It was felt that it was a more appropriate way to deal with juveniles to keep them out of the justice system and to get them into treatment.

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CHAIR WILSON opened public testimony and after ascertaining there was none, closed public testimony.

SENATOR BEGICH said that he appreciated Mr. Imbriani. He always has good suggestions and Senator Begich wanted to thanked him for his comments. Senator Begich is hopeful the bill will be passed rapidly. The statutes need to brought into compliance.

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CHAIR WILSON said that he would love to have juvenile detention camps off the books. He held SB 99 in committee.

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There being no further business to come before the committee, Chair Wilson adjourned the Senate Health and Social Services Standing Committee meeting at 2:53 p.m.